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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MAILED

Application Number: 09/865,470
Filing Date: May 24, 2001
Appellant(s): ROSS, FREDERICK L.

JAN 29 2008

GROUP 3600

Jenni R. Moen
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 2, 2007 appealing from the Office action mailed February 3, 2006.

1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,085,172	JUNGER	7-2000
6,536,659	HAUSER et al.	3-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,085,172 to Junger in view of U.S. Patent No. 6,536,659 to Hauser et al.

Regarding claim 1, Junger discloses a method of using a public communications network to manage the return of an item purchased by a consumer from a remote direct merchandiser, comprising the steps of:

- receiving a first communication at a return manager system (manufacturing side), the first communication comprising return request data from a local returns site (return side) (see at least col. 2, lines 41-46; col. 5, lines 5-35; Figures 4A-4B);
- providing a second communication from the returns manager system (manufacturing side) to the local return site (return side), the second communication comprising return validation data having at least a return validation code (return authorization number) (see at least col. 2, lines 46-52; col. 6, lines 30-36; col. 6, line 59- col. 7, line 6; col. 7, lines 54-59; col. 8, lines 18-21);
- validating the return by matching the return validation code (return authorization code, col. 8, lines 18-21) with a pre-authorization code (customer reference number) provided by the consumer to the local returns site (col. 7, lines 56-59) and;
- wherein the first and second communication using a public communication network (see at least col. 4, lines 39-54).

However, Junger does not disclose the pre-authorization code obtained by the consumer and indicating prior approval of the return by a remote direct merchandiser from whom the item was purchased. Junger discloses a customer reference number (pre-authorization code) which may be entered for an internal reference to identify the return authorization (col. 7, lines 57-59).

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Hauser, on the other hand, teaches the pre-authorization code obtained by the consumer and indicating prior approval of the return by a remote direct merchandiser from whom who the item was purchased (col. 7, line 65 - col. 8, line 4).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Junger, to include the pre-authorization code obtained by the consumer and indicating prior approval of the return by a remote direct merchandiser from whom the item was purchased, as taught by Hauser, in order to provide a more efficient process of returning a merchandise (Hauser (col. 2, lines 5-6).

Furthermore, Junger does not explicitly disclose the crediting an account of consumer. Junger discloses the system provides the dollar value of the product that is authorized for return. The dollar value may be based on the lower of 1) gross invoice price paid by the Dealer for the product, less the value of allowances and incentives given to the Dealer, or 2) vendor's net product pricing at the time of the return. The dealer may deduct the monetary value of authorized returns from any existing or future vendor invoices. (See col. 8, lines 34-42). Furthermore in Figure 5A, the batch return authorization label provides a "return promptly for credit" information. Moreover, Junger discloses after the returned products arrive at the regional warehouse they are sorted and are shipped from the regional warehouse for credit (col. 3, lines 58-61)

Hauser, on the other hand, teaches the crediting an account of consumer for a return value of the returned item (col. 2, lines 53-59).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Junger, to include the crediting of an account of the consumer, as taught by Hauser, in order to provide a credit for the value of the merchandise being returned at any time (Hauser col. 2, lines 54-55).

Regarding claims 2-4 and 12-14, Junger discloses Internet; public network; and a combination of Internet access and public telephone access (see at least col. 4, lines 39-54).

Regarding claims 5-6 and 15-16, Junger discloses receiving a third communication at the returns manager system, the third communication comprising: a request for general returns information from the consumer and providing a fourth communication from the returns manager system to the consumer, the consumer, the fourth communication comprising data representing general returns information to the consumer; and website (see at least col. 2, lines 14-17; col. 2, lines 44-58; col. 5, lines 9-15; col. 6, lines 11-20; col. 6, lines 30-46; col. 7, lines 51-62).

Regarding 7, 10, 17 and 20, Junger discloses accessing return policy data representing disposal of the item as desired by the direct merchandiser; and website (see at least col. 5, lines 9-15; col. 6, lines 58-64; col. 7, lines 7-17; col. 8, lines 42-44).

Regarding claims 8-9 and 18-19, Junger substantially discloses the claimed invention, however; Junger does not explicitly disclose a pre-authorization code to the consumer and the step of receiving return request data from the local returns site; and using a website. Junger discloses the manufacturer providing a list of approved returns and unapproved returns along with a return authorization number (abstract).

Hauser, on the other hand, teaches a returns validation code to the consumer and the step of receiving return request data from the local returns site; and using a website (col. 8, lines 22-35).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention was made to modify the method of Junger, to include a return validation code step prior to the receiving return request data step and using a website, as taught by Hauser, in order to provide a more efficient process of returning a merchandise (Hauser (col. 2, lines 5-6).

Regarding claim 11, Junger discloses a method of using a public communications network to manage the return of an item purchased by a consumer from a remote direct merchandiser, comprising the steps of:

- receiving a first communication at a return manager system (manufacturing side), the first communication comprising return request data from a local shipper (see at least col. 2, lines 56-60; col. 4, lines 7-19);
- providing a second communication from the returns manager system (manufacturing side) to the local return site (return side), the second communication comprising return validation data having at least a return validation code (return authorization number) (see at least col. 2, lines 46-52; col. 6, lines 30-36; col. 6, line 59- col. 7, line 6; col. 8, lines 18-21);
- validating the return by matching the return validation code (return authorization code, col. 8, lines 18-21) with a pre-authorization code (consumer reference number) provided by the consumer (col. 7, lines 56-59)

and;

- wherein the first and second communication using a public communication network (see at least col. 4, lines 39-54).

However, Junger does not disclose the pre-authorization code obtained by the consumer and indicating prior approval of the return by a remote direct merchandiser from whom the item was purchased. Junger discloses a customer reference number (pre-authorization code) which may be entered for an internal reference to identify the return authorization (col. 7, lines 57-59).

Hauser, on the other hand, teaches the pre-authorization code obtained by the consumer and indicating prior approval of the return by a remote direct merchandiser from whom the item was purchased (col. 7, line 65 - col. 8, line 4).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Junger, to include the pre-authorization code obtained by the consumer and indicating prior approval of the return by a remote direct merchandiser from whom the item was purchased, as taught by Hauser, in order to provide a more efficient process of returning a merchandise (Hauser (col. 2, lines 5-6).

Furthermore, Junger does not explicitly disclose the crediting an account of consumer. Junger discloses the system provides the dollar value of the product that is authorized for return. The dollar value may be based on the lower of 1) gross invoice price paid by the Dealer for the product, less the value of allowances and incentives given to the Dealer, or 2) vendor's net product pricing at the time of the return. The

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dealer may deduct the monetary value of authorized returns from any existing or future vendor invoices. (See col. 8, lines 34-42). Furthermore in Figure 5A, the batch return authorization label provides a "return promptly for credit" information. Moreover, Junger discloses after the returned products arrive at the regional warehouse they are sorted and are shipped from the regional warehouse for credit (col. 3, lines 58-61).

Hauser, on the other hand, teaches the crediting an account of consumer for a return value of the returned item (col. 2, lines 53-59).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Junger, to include the crediting of an account of the consumer, as taught by Hauser, in order to provide a credit for the value of the merchandise being returned at any time (Hauser col. 2, lines 54-55).

Regarding claim 21, Junger discloses a method for managing a return of an item, comprising: receiving, at a local returns cite, a returned item purchased from an off-site retailer by a consumer (col. 3, lines 29-40; col. 3, lines 44-57); accessing a returns manager system (manufacture side) that stores a return policy of the off-site retailer, the return policy comprising one or more guidelines that must be met to validate a return of the returned item (vendors specific returns policy and guidelines, col. 8, lines 42-44; requirements of a company's return policy, col. 1, lines 29-30); and validating the return by determining that the return guidelines are met by the returned item (col. 1, lines 26-29; col. 8, lines 42-44).

However, Junger does not disclose the pre-authorization code obtained by the consumer and indicating prior approval of the return by a remote direct merchandiser

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from whom the item was purchased. Junger discloses a customer reference number (pre-authorization code) which may be entered for an internal reference to identify the return authorization (col. 7, lines 57-59).

Hauser, on the other hand, teaches the pre-authorization code obtained by the consumer and indicating prior approval of the return by a remote direct merchandiser from whom the item was purchased (col. 7, line 65 - col. 8, line 4).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Junger, to include the pre-authorization code obtained by the consumer and indicating prior approval of the return by a remote direct merchandiser from whom who the item was purchased, as taught by Hauser, in order to provide a more efficient process of returning a merchandise (Hauser (col. 2, lines 5-6).

Furthermore, Junger does not explicitly disclose the crediting an account of consumer. Junger discloses the system provides the dollar value of the product that is authorized for return. The dollar value may be based on the lower of 1) gross invoice price paid by the Dealer for the product, less the value of allowances and incentives given to the Dealer, or 2) vendor's net product pricing at the time of the return. The dealer may deduct the monetary value of authorized returns from any existing or future vendor invoices. (See col. 8, lines 34-42). Furthermore in Figure 5A, the batch return authorization label provides "return promptly for credit" information. Moreover, Junger discloses after the returned products arrive at the regional warehouse they are sorted and are shipped from the regional warehouse for credit (col. 3, lines 58-61).

Hauser, on the other hand, teaches the crediting an account of consumer for a return value of the returned item (col. 2, lines 53-59).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Junger, to include the crediting of an account of the consumer, as taught by Hauser, in order to provide a credit for the value of the merchandise being returned at any time (Hauser col. 2, lines 54-55).

Regarding claims 22-28, Junger discloses receiving the returned item at a local returns site, the local returns site off-site from the retailer (col. 3, lines 44-55); providing pre-authorization of the return to the consumer before the item is received at the local returns site (col. 7, lines 56-58); transmitting a first communication comprising return request data to the returns manager system (manufacturing side) (see at least col. 2, lines 56-60; col. 4, lines 7-19); transmitting a second communication comprising return validation data from the returns manager system (manufacturing side), the return validation data comprising a return validation code (return authorization number) (see at least col. 8, lines 18-21); a pre-authorization code provided to the returns manager system by the consumer (col. 7, lines 56-58); accessing a rules-based disposition policy associated with the off-site retailer (col. 5, lines 15-39); selecting a disposition method for the returned product based on the rules-based disposition policy associated with the retailer (see at col. 5, lines 15-39; col. 8, lines 42-44; col. 1, lines 29-30); and sending a communication from the returns system to the retailer identifying the item being returned by the consumer (col. 6, lines 30-41; col. 6, lines 64-67; col. 7, lines 11-17).

Regarding claim 29, Junger discloses a system for managing a return of merchandise comprising; a retailer comprising a remote direct merchandiser from which one or more items may be purchased by a consumer (col. 3, lines 29-47; col. 2, lines 14-26); a returns manager system communicatively coupled to the retailer over a public communication network (col. 3, lines 29-55; Figure 3; col. 2, lines 14-26); receive a first communication identifying at least an item of merchandise (col. 2, lines 41-49; col. 5, lines 5-35; Figures 4A-4B; col. 2, lines 14-26); identify the retailer as the remote direct merchandiser from which at least one returned item was purchased by the consumer (col. 3, lines 29-55; col. 2, lines 14-26); and send a second communication to the retailer identifying the return (col. 3, lines 29-55; col. 2, lines 14-26).

However, Junger does not disclose item of merchandise to be returned by the consumer in the future; and the item of merchandise to be returned by the consumer to provide the retailer with advance notification of the return. Junger discloses a customer reference number (pre-authorization code) which may be entered for an internal reference to identify the return authorization (col. 7, lines 57-59).

Hauser, on the other hand, teaches item of merchandise to be returned by the consumer in the future; and the item of merchandise to be returned by the consumer to provide the retailer with advance notification of the return. Junger discloses a customer reference number (pre-authorization code) may be entered for an internal reference to identify the return authorization (col. 7, lines 57-59).

Hauser, on the other hand, teaches the pre-authorization code obtained by the consumer and indicating prior approval of the return by a remote direct merchandiser form who the item was purchased (abstract; col. 7, line 65 - col. 8, line 4).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Junger, to include the pre-authorization code obtained by the consumer and indicating prior approval of the return by a remote direct merchandiser form who the item was purchased, as taught by Hauser, in order to provide a more efficient process of returning a merchandise (Hauser (col. 2, lines 5-6).

Regarding claims 30 and 36, Junger substantially disclose the claimed invention, however, it does not disclose update an account to reflect the status of the item as return pending and credit an account of the consumer. Junger discloses the system provides the dollar value of the product that is authorized for return. The dollar value may be based on the lower of 1) gross invoice price paid by the Dealer for the product, less the value of allowances and incentives given to the Dealer, or 2) vendor's net . product pricing at the time of the return. The dealer may deduct the monetary value of authorized returns from any existing or future vendor invoices. (See col. 8, lines 34- 42). Furthermore in Figure 5A, the batch return authorization label provides a "return promptly for credit" information. Moreover, Junger discloses that if a request is approved, a return authorization number and update the batch header to indicate the approved status (col. 8, lines 18-21).

Hauser, on the other hand, teaches update an account to reflect the status of the item as return pending and credit an account of the consumer (col. 2, lines 49-67).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Junger, to include the update an account to reflect the status of the item as return pending and credit an account of the consumer, as taught by Hauser, in order to track the handling of the returned merchandise (Hauser col. 2, lines 66-67).

Regarding claims 31-35 and 37-39, Junger disclose the first communication is received from a local returns site communicatively coupled to the returns manager system (see at least col. 2, lines 41-46; col. 5, lines 5-35; Figures 4A-4B); the local returns site is operatively to receive the returned item from the consumer (col. 7, lines 56-58; Figure 4G); the local returns site is operable to receive from the returned item from a shipper (col. 4, lines 2-6); wherein the local returns is operable to process the returned item (col. 5, lines 5-8; col. 7, lines 18-31); receive a third communication from the local returns site, which comprises return validation data (col. 2, lines 46-52; col. 6, lines 30-36; col. 6, line 59- col. 7, line 6; col. 7, lines 54-59; col. 8, lines 18-21); transmit a fourth communication to the local returns site, which comprises return validation data having at least a return validation code (col. 2, lines 46-52; col. 6, lines 30-36; col. 6, line 59- col. 7, line 6; col. 7, lines 54-59; col. 8, lines 18-21); Internet (internet or the like); telephone network (Figure 3); and the first communication identifies an offer associated with the returned item (col. 1, lines 53-co1.2, line 6; col. 2, lines 3-6; col. 2, lines 14-26).

(10) Response to Argument

Preliminary Note: The Examiner has adopted the Appellants' outline format for use in addressing Appellants' arguments.

A. Claims 1, 11 and 21

Appellant remark that "Junger-Hauser combination does not disclose, teach or suggest validating the return by matching the return validation code with a preauthorization code provided by the consumer to local returns site" (Arguments section, page 21, second paragraph).

The Examiner notes that Junger-Hauser discloses the "validating the return by matching the return validation code with a pre-authorization code". Junger discloses a computer system at a product return center location which obtains identifying information for a product which is to be returned (col. 2, lines 41-43). This identifying information is then submitted to a remote return approval computer system through the Internet or the like (col. 2, lines 44-46). The return approval computer system may then utilize the identifying information to determine whether the returned product satisfies applicable return criteria (col. 2, lines 46-50). If so, the item is pre-approved for return (col. 2, lines 49-50). The product return location preferably obtains identifying information for plurality of returned product at a time (col. 2, lines 50-52). In response to the product identifying information submitted by the product return location, the return approval location may provide a list of approved returns and unapproved returns along

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with a return authorization number for a batch of approved returns (col. 2, lines 52-56).

Furthermore in Figure 4F, a screen is shown before a return authorization (RA) approval is submitted. An operator is prompted to enter the name and phone number and a customer reference number (e.g. bill of lading number, file number, invoice number, etc.) (Col. 7, lines 53-59). If the entered information is verified (Figure 4G) with the customer reference number, the information is re-validated and a RA number is matched (Figure 4H). The customer reference number is entered to identify the return authorization (col. 5, lines 8-9). Once the request is approved a return authorization number (RA number) is created (col. 8, lines 18-22).

Such entering the name and phone number and a customer reference number for return authorization approval; the entered information is verified and re-validated, and the matching of an RA number with the approval are considered; customer reference number with a return authorization number are considered the step of validating the return by matching the return validation code with a pre-authorization code.

The Examiner then turns to Hauser to teach the pre-authorization obtained by the consumer and indicating prior approval of the return by a remote direct merchandiser from whom who the item was purchased. In col. 7, line 67 - col. 8, line 5, Hauser teaches a merchant electing to pre-authorize customers to return any purchased merchandise with which the customer are dissatisfied, without the need to obtain further authorization for the return.

Such a merchant electing to pre-authorize customers to return any purchased merchandise are considered the pre-authorization obtained by the consumer and indicating prior approval of the return by a remote direct merchandiser from whom who the item was purchased.

Appellant remark that the Jungër-Hauser combination does not disclose, teach, or suggest "validating the return by matching the return validation code with a pre-authorization code provided by the consumer to the local returns site, the pre-authorization code obtained by the consumer and indicating prior approval of the return by a remote direct merchandiser from whom the item was purchased."; and "a returns manager system that stores a return policy of the off-site retailer, the return policy comprising one or more return guidelines that must be met to validate a return of the returned item, a one of the one or more return guidelines requiring that preauthorization of the returned item is obtained by the consumer before the returned item is received at the local returns site, the preauthorization indicating prior approval of the return by a remote direct merchandiser from whom the item was purchased." (Arguments section, page 25, second paragraph)

The Examiner draws Appellants attention to the response above, pertaining to claim 1.

B. Claim 29

Appellant remarks "that the piece meal rejection of Claim 29, presented by Examiner, fails to consider the patentability of the particular combination of features and operations recited in Appellant's claim language....such a piecemeal rejection of Appellant's claim fails to give credence to each element of Appellant's claim 1 and to the overall combination of features recited in the claim....such a rejection illustrates that the Examiner has merely pieced together disjointed portions of unrelated references to reconstruct Appellant's claims". (Argument section, page 26, second paragraph, page 27, bridging of first paragraph)

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In addition, the combining of known prior art elements would have been predictable to one of ordinary skill in the art. *KSR*, 127, 82 USPQ2d (2007)

Appellant remarks that "Hauser nor Junger nor their proposed combination, disclose or teach or suggest identifying the item of merchandise to be returned by the consumer to provide the retailer with advance notification of the return, as recited in Appellant's claim 29".

The Examiner notes that Hauser teaches "the identifying the item of merchandise to be returned by the consumer to provide the retailer with advance notification of the return". In col. 7, line 67 - col. 8, line 5, Hauser teaches a merchant electing to pre-authorize customers to return any purchased merchandise with which

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the customer are dissatisfied, without the need to obtain further authorization for the return.

Such a merchant electing to pre-authorize customers to return any purchased merchandise are considered "the identifying the item of merchandise to be returned by the consumer to provide the retailer with advance notification of the return".

C. Claims 5, 6, 15, and 16

Appellant remark that "Junger-Hauser combination does not disclose, teach or suggest "receiving a third communication at the returns manager system, the third communication comprising a request for general returns information from the consumer" and "providing a fourth communication from the returns manager system to the consumer, the fourth communication comprising data representing general returns information," as recited in Claims 5 and 15". (Argument section, page 29, first paragraph)

The Examiner does not agree. Junger discloses a customer returning a product with no receipt or a receipt that does not have a correct serial number, a search is conducted in the local database for sale information concerning the specific item being returned. Junger discloses that if no sale information is located, the general database may be accessed and searched for sales information, and the return is handled accordingly. (Col. 2, lines 18-26)

Such customer returning a product with no receipt or a receipt that does not have a correct serial number; conducting a search in the local database for sale information

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concerning the item being returned; and conducting a search in a general database and the return is handled accordingly are considered "receiving a third communication at the returns manager system, the third communication comprising a request for general returns information from the consumer" and "providing a fourth communication from the returns manager system to the consumer, the fourth communication comprising data representing general returns information".

Appellant remarks that "Junger and Hauser do not provide a suggestion to combine these two references in the manner suggested by the Examiner". (Argument section, page 30, bridging of first paragraph)

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation is found in Hauser in col. 2, lines 5-6. In addition, *KSR* forecloses Appellant's argument that a specific teaching, suggestion, or motivation is required to support a finding of obviousness. *KSR*, 82 USPQ2d at 1396 (2007)

Appellant remarks that "it is improper for an Examiner to use hindsight having read the Applicant's disclosure to arrive at an obviousness rejection". (Argument section, page 30, fourth paragraph)

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

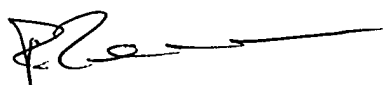
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